

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ARTHUR THOMPSON,	)	
	)	No. CV-05-3081-CI
Plaintiff,	)	
	)	ORDER GRANTING IN PART AND
v.	)	DENYING IN PART DEFENDANT'S
	)	MOTION TO ALTER OR AMEND
JO ANNE B. BARNHART,	)	JUDGMENT
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
	)	

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BEFORE THE COURT is Defendant's Motion to Alter or Amend Judgment. (Ct. Rec. 26.) Attorney D. James Tree represents Plaintiff; Assistant United States Attorney Pamela J. DeRusha and Special Assistant United States Attorney Jeffrey H. Baird represent Defendant. The parties consented to proceed before the magistrate judge. (Ct. Rec. 3.)

In its Motion timely filed under FED. R. Civ. P. 59, Defendant asserts the court's judgment for Plaintiff should be amended or altered because the court applied the "clear and convincing" standard for the ALJ's rejection of Plaintiff's treating and examining physicians' opinions, rather than the "specific and legitimate" standard required where these medical opinions are contradicted. (Ct. Rec. 27 at 2.) Defendant also contends that the court misapplied the "credit as true" rule in its opinion. (Ct. Rec. 27 at 3.)

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1 A. Rejection of treating and examining physician opinions

2 In its opinion, the court found the ALJ failed to properly reject  
3 the medical opinions of examining and treating physicians regarding  
4 the severity of Plaintiff's fatigue, lumbar condition and limitations  
5 in gross manipulation at step two. The court found, "[t]he ALJ noted  
6 only that the opinion of the consulting physician [Dr. Staley] was  
7 persuasive because he 'had access to more of the claimant's medical  
8 records.' This reason by itself, is not sufficiently clear and  
9 convincing to reject, at step two, the findings of the examining and  
10 treating physicians." Decision at 9. This finding is altered to  
11 state, "[t]his reason by itself is not sufficient to reject at step  
12 two, the findings of the examining and treating physicians." The  
13 court's decision is further amended to add that on remand, at step  
14 two, the ALJ shall fully discuss the accepted medical opinions in the  
15 record and what weight was accorded to those opinions, including the  
16 opinions of non-examining doctors. If an examining or treating  
17 physician's medical opinion regarding the severity of an impairment  
18 is uncontradicted, the ALJ shall give "clear and convincing" reasons  
19 why the opinion was rejected. If the medical opinion is contradicted  
20 by another acceptable medical source, the ALJ shall give specific and  
21 legitimate reasons for rejection.<sup>1</sup> In rejecting the opinions of other  
22 sources, such as James Martin, D.C., the ALJ shall give specific

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24 <sup>1</sup> As is the established Ninth Circuit rule, a non-examining  
25 physician's opinion (including medical expert testimony), without  
26 more is not substantial evidence. *Lester*, 81 F.3d at 831.

1 reasons germane to that source. *Regennitter v. Commissioner of Social*  
2 *Sec. Admin.*, 166 F.3d 1294, 1298 (9th Cir. 1999).

3 B. "Credit as true" rule

4 Defendant confuses the "credit as true" rule articulated in  
5 *Lester v. Chater*, 81 F.3d 821 (9<sup>th</sup> Cir. 1995), with the rule regarding  
6 whether a case should be remanded for immediate benefits or for  
7 additional proceedings as articulated in *Harman v. Apfel*, 211 F.3d  
8 1172, 1178 (9<sup>th</sup> Cir. 2000). The court may credit as a matter of law,  
9 a medical opinion that is improperly rejected by the Commissioner.  
10 *Lester*, at 834 (citing *Hammock v. Bowen*, 879 F.2d 498, 502 (9<sup>th</sup> Cir.  
11 1989)). Once credited, the court determines whether the evidence with  
12 the newly credited medical opinions supports the award of immediate  
13 benefits or whether additional issues must be resolved in further  
14 proceedings. Here, this occurred, and the court determined remand for  
15 additional proceedings was appropriate. As Defendant states she has  
16 no objections to this remedy (Ct. Rec. 27 at 4), the court declines  
17 to alter or amend its order remanding this matter to the Commissioner  
18 for further proceedings. Accordingly,

19 **IT IS ORDERED**, Defendant's Motion (Ct. Rec 26) is **GRANTED IN PART**  
20 and **DENIED IN PART**, consistent with the court's decision set forth  
21 above.

22 The District Court Executive file this Order and provide a copy  
23 to counsel for Plaintiff and Defendant.

24 DATED June 29, 2006.

25  
26 S/ CYNTHIA IMBROGNO  
UNITED STATES MAGISTRATE JUDGE

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